

OLMSTEAD DECISION

Overview

On June 22, 1999, the U.S. Supreme Court affirmed through its *Olmstead v. L.C.* ruling that under the Americans With Disabilities Act (ADA) unjustifiable institutionalization of a person with a disability is discrimination when the treating provider believes that community-based care is appropriate and safe; when the affected person does not oppose the community-based option; and when the placement can be reasonably accommodated taking into account the resources available to the state and the needs of others. The court, in the ruling, determined that institutionalization severely limits a person's ability to interact with family and friends, to work, and to make a life for him or herself.

The [Olmstead](#) case was brought by two Georgia women with dual diagnoses (developmental disability and mental illness). At the time the suit was filed, both women were receiving mental health services in a state-run institution (inpatient psychiatric hospital), despite the fact that state treatment professionals had evaluated each as capable of being appropriately served in a community-based setting.

The Court based its ruling in *Olmstead* on Title II of the ADA, which pertains to Public Services. Section 12132 of Title II states the following:

"no qualified individual with a disability shall, by reason of his disability, be excluded from participation in, or be denied benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

Federal Regulations define forms of discrimination prohibited under the ADA. This regulation {28 CFR Section 35.130(d)} is commonly referred to as the integration mandate: *A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.* The U.S. Department of Justice has defined *most integrated setting* as a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible. Certain principles have emerged from the court's ruling:

- unjustified institutionalization of people with disabilities is discrimination and violates the ADA;
- states are required to provide community-based services for persons with disabilities otherwise entitled to institutional services when the states treatment professionals reasonably determine that:
 - a) community based care is appropriate,
 - b) the person does not oppose such placement, and
 - c) the placement can reasonably be accommodated, taking into account resources available to the state and the needs of others receiving state-supported disability services;

- a person cannot be denied community services just to keep an institution at its full capacity; and,
- the ADA does not require that community-based services be imposed on people with disabilities who do not desire it.

The court also held that states are obliged to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Meeting the fundamental alteration test takes into account three factors:

- 1) the cost of providing services in the most integrated setting;
- 2) the resources available to the state; and
- 3) how the provision of services affects the ability of the state to meet the needs of others with disabilities.

Policy

Individuals must be informed of their right to choose where they receive services, when public funds are being used to pay for the services. Public funds pay for services the regional office authorizes.

Procedure

When should people be informed of the right to choose where they receive services?

- *For new people just entering services with the division, the support coordinator (formally known as service coordinator) should inform the person of the right to choose at the initial meeting, or when the individual service plan is facilitated.*
- *For people already in our service system, no later than when the annual individual service plan is reviewed and renewed, or when a current individual service plan is adjusted (services are changed, added, etc.), or anytime during a discussion with the individual it is evident that the information needs to be provided immediately.*
- *The Division has a brochure, "[Individual Rights of Persons Receiving Services from the Division of Developmental Disabilities](#)". All individuals who are served by the Division should be given a copy of this brochure so that they are informed of all of their rights. Under the section Individual Rights, this brochure includes the statement that persons have the right to receive services and supports in the most integrated setting appropriate for the person's particular needs. Division of DD.*

How should people be informed of the right to choose where they receive services?

The discussion needs to take place in person and not by mailing information to individuals or their parents or guardians to read and sign, and not by telephone. A personal discussion will allow people the chance to ask for any clarification they may need.

If a person wants more information on community services, is that information available?

Our community services program is basically our DD Medicaid Home and Community Based Waiver. There is an information sheet, "Missouri's Medicaid Waiver for persons with Developmental Disabilities". You can use this document explain the waiver. You may also give a copy of the document to individuals, families, or guardians.

If a person wants more information regarding the Olmstead decision, is information available?

There is an information sheet, "Assuring Access to Community Living for persons with Disabilities". This document may be useful to support coordinators who need an overview of the Olmstead decision in order to explain to individuals the right to choose where they receive services. The document can also be given to individuals, families, or guardians who request more detailed information.

Are there any limitations to a person's right to choose where they receive services?

People have the right to choose where they receive services with the following conditions:

- *If a person is choosing services in the community versus in a segregated setting, clinical staff with the Division are responsible for determining that the person's needs can be safely met in the community;*
- *Although reasonable accommodations may be made to existing programs, in order to meet the service and support needs of an individual, the state is not required to make fundamental changes in existing programs; and*
- *The cost of serving one individual in the community cannot adversely impact the state's ability to meet the needs of others who have disabilities.*
- *Resources available to the state must be considered.*
- *The availability of qualified providers.*